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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALEX VILLANUEVA,

Plaintiff,

v.

COUNTY OF LOS ANGELES,
COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT, LOS
ANGELES COUNTY BOARD OF
SUPERVISORS, COUNTY EQUITY
OVERSIGHT PANEL, LOS
ANGELES COUNTY OFFICE OF
INSPECTOR GENERAL,
CONSTANCE KOMOROSKI,
MERCEDES CRUZ, ROBERTA
YANG, LAURA LECRIVAIN,
SERGIO V. ESCOBEDO, RON
KOPPERUD, ROBERT G. LUNA,
MAX-GUSTAF HUNTSMAN,
ESTHER LIM, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 2:24-cv-04979 SVW (JCx)

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

*[Filed Concurrently with Supplemental
Declaration of Jason H. Tokoro; Reply
Separate Statement; and Evidentiary
Objections to Declaration of Alex
Villanueva]*

Date: May 19, 2025
Time: 1:30 p.m.
Crtrm.: 10A

Assigned to the Hon. Stephen V.
Wilson, Crtrm. 10A and Magistrate
Judge Jacqueline Chooljian, Crtrm. 750

Trial Date: June 3, 2025

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1 **I. INTRODUCTION**

2 The material facts of this case are not in dispute. The parties agree Plaintiff's
3 First Amendment retaliation claim arises from his protected speech while he was the
4 elected Sheriff. The parties also agree Plaintiff was investigated for misconduct,
5 and that the investigation found he violated the Department's POE while in office
6 and resulted in a "Do Not Rehire" notation in his County personnel file.

7 What Plaintiff's Opposition does *not* say, however, speaks to the factual and
8 legal insufficiency of his claim. Faced with *no facts* supporting his conspiracy
9 theory and legal standards he cannot meet, the Opposition simply ignores them. The
10 claim fails as a matter of law.

11 *First*, the Opposition ignores the heightened standard that indisputably applies
12 to First Amendment retaliation claims by elected officials. Even if the Court credits
13 Plaintiff's (factually-bereft) theory that the Board spearheaded a campaign to
14 publicly expose his conduct, it should still grant summary judgment. Under binding
15 Ninth Circuit and Supreme Court precedent, public censure concerning the conduct
16 of a public official does not establish an adverse action supporting a First
17 Amendment claim—even if it harms the plaintiff's reputation and even if it is driven
18 by retaliatory animus of political rivals.

19 Plaintiff put his own character at issue when he ran for public office. He
20 openly opposed the Board on public issues and took controversial stances. The First
21 Amendment protects his right to do so. But it equally protects *Defendants'* right to
22 oppose Plaintiff's policies and openly discuss Plaintiff's conduct in office, and it
23 "cannot be used as a weapon" against Defendants for exercising their own protected
24 rights. *Boquist v. Courtney*, 32 F.4th 764, 776 (9th Cir. 2022) (quoting *Hous. Cmty.*
25 *Coll. Sys. v. Wilson*, 595 U.S. 468, 478 (2022)).

26 *Second*, Plaintiff ignores that his claim cannot meet the "but-for" causation
27 standard. Undisputed facts show any purported retaliation was not the but-for cause
28 of the investigation and file notation. Plaintiff's claim fails for these reasons.

1 Plaintiff's Opposition has fatal defects in other respects, too. Plaintiff does
2 not meet his prima facie burden to show that the file notation was not the product of
3 a legitimate process but, rather, some retaliatory action by the County. He does not
4 identify any material *facts* supporting his claim that the Board orchestrated
5 retaliatory action against him. He fails to show any involvement in this case by the
6 Board or Sheriff Luna in the POE investigation and resulting file notation.

7 Speculation, conjecture, and conclusory self-serving declarations do not
8 create a triable issue and are insufficient to overcome summary judgment. So, too,
9 are arguments premised on mischaracterizations of undisputed documents. Plaintiff,
10 thus, fails to show any triable issue of fact supporting causation.

11 Plaintiff also fails to establish *Monell* liability. He does not—and cannot—
12 point a to custom, policy, or practice that harmed him. Nor does he identify any fact
13 establishing concrete harm. He cannot show he has applied for any County job,
14 even after learning that his “Do Not Rehire” notation does not serve as a bar to
15 future County employment. Plaintiff lacks standing.

16 The Court should grant summary judgment under Rule 56.

17 **II. ARGUMENT**

18 **A. Summary Judgment Is Proper On Plaintiff's Claim**

19 **1. Plaintiff Applies the Wrong First Amendment Standard**

20 Defendants' Motion establishes that, because Plaintiff's First Amendment
21 claim is based on his speech concerning public issues while he was an elected
22 official, a heightened standard applies. (Mot. at 10:24–11:11.) Plaintiff ignores the
23 numerous elected-official cases cited by Defendants and instead points to an
24 inapposite standard from *Coszalter v. City of Salem*, 320 F.3d 968 (9th Cir. 2003).
25 (See Opp. at 9:6–21, 11:3–6.) *Coszalter* did not involve speech by elected officials;
26 it involved speech by maintenance workers—i.e., lower-level, non-public-facing
27 government employees. 320 F.3d at 973–78. *Coszalter* is inapplicable here.

28 In *Boquist*, the Ninth Circuit left no room for debate on the difference

1 between the First Amendment standards governing employees and elected officials:
2 “We next address whether the framework that applies to evaluating speech
3 restrictions that the government imposes on its employees also applies to restrictions
4 on the speech of elected officials. *We conclude it does not.*” 32 F.4th at 778–79
5 (emphasis added). It is undisputed that Plaintiff was not an employee at the time he
6 engaged in protected speech; his most recent declaration confirms his claim is based
7 on speech occurring while he was Sheriff. (*See* Dkt. No. 105-8 ¶ 1.)

8 By failing to address these cases, Plaintiff has waived any argument under
9 them and concedes Defendants are correct about the proper standard for elected
10 officials like Plaintiff. *E.g., Colonies Partners LP v. County of San Bernardino*, No.
11 EDCV 18-420 JGB (SHKx), 2020 WL 5102160, at *29 n.42 (C.D. Cal. July 28,
12 2020) (arguments not presented in summary judgment opposition are waived).

13 **2. Plaintiff Was Not Subject to a Materially Adverse Action**

14 “[I]t is more difficult for elected officials to establish that they were subjected
15 to an adverse action that offends the First Amendment because ‘more is fair in
16 electoral politics than in other contexts.’” *Boquist*, 32 F.4th at 776 (quoting *Blair v.*
17 *Bethel Sch. Dist.*, 608 F.3d 540, 544 (9th Cir. 2010)). “In this country, we expect
18 elected representatives to shoulder a degree of criticism about their public service
19 from their constituents and their peers.” *Id.* at 776 (quoting *Wilson*, 595 U.S. at 478).

20 Supreme Court and Ninth Circuit precedent requires an elected official to
21 meet a heightened standard and show the adverse act deprived the official of the
22 ability to do his job or exercise his authority in office. *Wilson*, 595 U.S. at 479.
23 Plaintiff falls woefully short of meeting this standard.

24 **(a) The File Notation Was Not “Materially Adverse”**

25 Under settled law, public censures regarding an official’s conduct in office—
26 like those Plaintiff complains of here—are legally insufficient to state a First
27 Amendment retaliation claim. *Wilson*, 595 U.S. at 479; *Blair*, 608 F.3d at 546. It is
28 undisputed the County’s acts did not prevent Plaintiff from doing his job or from

1 exercising his authority and enjoying his privileges as an elected official. *See*
2 *Boquist*, 32 F.4th at 777 (“[A]n adverse action against an elected official is material
3 when it ‘prevent[s] [the elected official] from doing his job,’ ‘deprive[s] him of
4 authority he enjoyed by virtue of his popular election,’ or otherwise prevents him
5 from enjoying ‘the full range of rights and prerogatives that came with having been
6 publicly elected’” (first alteration added) (citations omitted); *accord*, *Wilson*, 595
7 U.S. at 481 (discipline falling short of exclusion from office is insufficient).

8 Instead of addressing the correct legal standard, Plaintiff invokes a lower,
9 inapplicable standard and offers a perfunctory argument that the Board’s public
10 statements and the file notation regarding his conduct in office are enough to state a
11 constitutional claim. (Opp. at 9:6–10, 11:3–6.) Plaintiff is wrong.

12 The Department was entitled to state that Plaintiff violated the POE. *See*
13 *Wilson*, 595 U.S. at 479. Even assuming such a statement was intended to harm his
14 reputation, that is not enough to support a First Amendment retaliation claim. *See*
15 *Zilich v. Longo*, 34 F.3d 359, 363 (6th Cir. 1994); *Phelan v. Laramie Cnty. Cmty.*
16 *Coll. Bd. of Trs.*, 235 F.3d 1243, 1248 (10th Cir. 2000) (“In the First Amendment
17 context, however, injury to one’s reputation is not enough”)

18 Defendants provided substantial evidence that the “Do Not Rehire” notation
19 is merely an administrative flag on a file, designed to call attention to the fact that
20 Plaintiff committed a POE violation. (*See, e.g.*, SUF 50.) Plaintiff provides no
21 controverting evidence. Instead, he submits a self-serving declaration, which cannot
22 overcome summary judgment.¹ *Nilsson v. City of Mesa*, 503 F.3d 947, 952 n.2 (9th

23 _____
24 ¹ Plaintiff’s claim that his experience as Sheriff taught him about the adverse effects
25 of a “Do Not Rehire” notation (*see* Dkt. No. 105-8 ¶ 25) contradicts his deposition
26 testimony and other statements that the notation was created *after* he left office
27 specifically to punish him. (Supplemental Tokoro Decl. Exs. 80, 81 at 209:22–
28 210:17.) His declaration should also be disregarded for this reason. *Van Asdale v.*
Int’l Game Tech., 577 F.3d 989, 998 (9th Cir. 2009) (“The general rule in the Ninth
Circuit is that a party cannot create an issue of fact by an affidavit contradicting his

1 [Cir. 2007](#)) (“A conclusory, self-serving affidavit, lacking detailed facts and any
2 supporting evidence, is insufficient to create a genuine issue of material fact.”).

3 A file notation indicating that Plaintiff violated a County policy is similar to
4 the public reprimands and censures that numerous courts have held *cannot*
5 constitute a materially adverse action. *E.g.*, [Wilson](#), 595 U.S. at 472, 479 (formal
6 censure stating the elected official’s conduct was “inappropriate” and
7 “reprehensible” does not support a First Amendment claim); [Phelan](#), 235 F.3d at
8 1247 (formal censure stating that elected official violated ethics policy does not
9 trigger a First Amendment violation); [Zilich](#), 34 F.3d at 361–62 (city council
10 resolution stating former councilman was unqualified to hold office could not
11 support First Amendment retaliation claim).

12 Plaintiff’s failure to address these cases, along with his failure to identify any
13 dispute of material fact regarding the effect of the file notation, is dispositive.

14 **(b) Plaintiff’s Speech Has Not Been Chilled**

15 It also undisputed that Plaintiff’s speech has not been chilled. Quite the
16 contrary—Plaintiff continues to speak out publicly regarding the Board, the
17 Department, Mr. Huntsman, and Ms. Lim. (Mot. at 15:3–21.) Defendants cited
18 extensive examples of Plaintiff’s continued speech, which make plain that the
19 notation he received has not deterred him from speaking out. (*See id.*) *See Wilson*,
20 595 U.S. at 471, 479 (that plaintiff responded to reprimand by saying it would
21 “never . . . stop me” and “did not exactly cower silently” showed his speech was not
22 chilled); [Phelan](#), 235 F.3d at 1248 (noting the plaintiff was not chilled).

23 Plaintiff’s Opposition offered no rejoinder: it simply states, without any
24 factual or legal support, that the file notation “would chill anyone from speaking
25 out.” (Opp. at 9:17.) That is clearly not the case, and it undisputedly has not chilled
26 *Plaintiff’s* speech. Plaintiff’s bald assertion, untethered to any supporting evidence,
27 _____
28 prior deposition testimony.” (citation omitted)).

1 does not satisfy his prima facie burden to establish he suffered a materially adverse
2 action infringing his First Amendment rights.

3 **3. Plaintiff Does Not Establish Substantial Causation**

4 Plaintiff also presents zero facts to meet his burden of establishing a
5 “substantial causal relationship” between his protected speech and the adverse
6 action. *E.g.*, *Blair*, 608 F.3d at 543.²

7 Plaintiff is bound by the allegations in his FAC. *Bay Area Surgical Mgmt.*
8 *LLC v. Aetna Life Ins. Co.*, 166 F. Supp. 3d 988, 994 (N.D. Cal. 2015) (“Plaintiffs
9 must abide by the consequences of its pleading decision and cannot, at its
10 convenience, switch to a theory not plead in the Complaint.”); *Blissful Enters., Inc.*
11 *v. Cincinnati Ins. Co.*, 421 F. Supp. 3d 193, 198 (D. Md. 2019) (“A plaintiff is
12 ‘bound by the allegations contained in its complaint and cannot, through the use of
13 motion briefs, amend the complaint.’” (citation omitted)), *aff’d*, No. 19-2217, 2022
14 WL 6671618 (4th Cir. Oct. 11, 2022).

15 Plaintiff alleges that the Board conspired to punish him for his speech. (*See*
16 FAC at 3:22–25.) He is bound by these allegations. But no facts support them.
17 Defendants provided substantial undisputed evidence that neither the Board nor
18 Sheriff Luna were involved in the investigations into Plaintiff’s misconduct or the
19 resulting file notation. (SUF 52–53. 56–57.) Plaintiff’s Opposition points to no
20 facts related to actions by the Board or Sheriff Luna that show their involvement in
21 the complaints filed against him, the investigation into those complaints, or the
22 outcome.

23 Instead, he cites to various political disagreements between himself and the
24

25 ² Plaintiff again cites to the wrong standard and claims that he only needs to show
26 that Defendants’ conduct was “fairly traceable” to his protected speech. (Opp. at
27 9:23–25, citing *Allen v. Wright*, 468 U.S. 737, 751 (1984).) *Allen* is not a First
28 Amendment retaliation case involving an elected official. It evaluated standing to
challenge an IRS practice in the context of a 12(b)(6) motion to dismiss.

1 Board, which he characterizes as “animus.” (Opp. at 11:14–22.) All of these
2 alleged incidents have nothing to do with the “Do Not Rehire” notation, and
3 Plaintiff does not identify a single fact to establish a causal link.

4 Plaintiff bristles at the fact that others criticized *his* political speech and
5 claims it supports some level of animus. But he cannot have it both ways—Plaintiff
6 cannot criticize the political views of others, only to then claim that their criticism of
7 *his* politics constitutes unconstitutional animus. *Wilson*, 595 U.S. at 478 (“The First
8 Amendment surely promises an elected representative like Mr. Wilson the right to
9 speak freely on questions of government policy. But just as surely, it cannot be used
10 as a weapon to silence other representatives seeking to do the same.”).

11 (a) There Was No “Closed” Investigation

12 Plaintiff continues to push the false narrative that the investigations were
13 “closed” and then reopened for political retribution. (See Opp. at 6:12-19.) No facts
14 to support this claim, and Plaintiff has changed his story several times.

15 At first, Plaintiff claimed that after he learned of the “Do Not Rehire”
16 notation in *January 2024*, he spoke to former Chief of Professional Standards Ed
17 Alvarez, who stated the Department determined no policy violations occurred and
18 that the complaints by Huntsman and Lim were placed into a “suspense file.” (FAC
19 ¶ 17.) Then, at his deposition, Plaintiff claimed that the source of this information
20 was a conversation with John Satterfield that occurred sometime around *July 2022*.
21 (Supplemental Tokoro Decl. Ex. 81 at 242:8–15.)

22 Now, in his Opposition—for the first time ever—Plaintiff contends that the
23 investigations were “completed” in *May 2023* and then reopened in October 2023.
24 (Opp. at 6:10–19.) Plaintiff says nothing about the Department concluding there
25 was no misconduct. He says nothing about a “suspense file.” And he does not even
26 mention either conversation with Alvarez or Satterfield. Instead, he introduces a
27 factually-unsupported claim that is nowhere in Plaintiff’s Complaint and which
28 directly contradicts Plaintiff’s allegations and deposition testimony.

1 The Court need look no further than the evidence presented with Defendants’
2 Motion. Defendants attached deposition testimony from Lieutenant Ann Devane
3 and Commander Ron Kopperud, both of whom detail that, from June 2023 to
4 October 2023, the Department was preparing the case files for review by the CEOP.
5 (Mot. at 7:28–8:5; SUF 37–44.)

6 Plaintiff does not attempt to controvert any of the sworn testimony from
7 Kopperud or Devane. Instead, he argues that the Investigator Logs submitted by
8 Defendants with their Motion show that the investigation was completed and then
9 “delayed” until October 2023. (Opp. at 12:4–6.) That is simply untrue.

10 The Investigator Logs (COE Exs. 26, 39) show that (i) the Department
11 received the case files from the investigator on or around June 27, 2023; (ii) Devane
12 started “reviewing, completing and stacking the case” on July 5, 2023; (iii) Devane
13 ordered transcriptions of the video interviews of Huntsman and Lim for inclusion in
14 the case file in August 2023; (iv) Devane received the transcriptions on August 28,
15 2023; (v) Devane finalized the case files in late September 2023; and (vi) Kopperud
16 approved the case files on October 2, 2023 and submitted them to the CEOP.

17 This is all readily apparent from the face of the Logs. Plaintiff cannot simply
18 ignore these facts in an attempt to avoid summary judgment. There is no genuine
19 dispute of material fact that the investigations were *never* closed and then reopened.

20 **(b) Plaintiff Blatantly Mischaracterizes the Facts**

21 The Opposition is rife with other misleading statements for which he has no
22 evidentiary support. Plaintiff even goes so far as to cite to “facts” that do not exist.

23 Taking one example, Plaintiff claims that the County “leaked” news of his
24 “Do Not Rehire” notation to the Los Angeles Times in an attempt to damage him.
25 (Opp. at 9:4–6.) In support, he cites to PSS 15 and 30. PSS 15 cites the Investigator
26 Logs, discussed *supra*, and have nothing to do with the Times. (See Dkt. No. 105-
27 1.) PSS 30 cites to Villanueva Declaration “Paragraph 38.” That does not exist—
28 the Villanueva Declaration has only 33 paragraphs. (See Dkt. No. 105-8.)

1 Plaintiff cannot invent unsubstantiated “facts” to avoid summary judgment,
2 especially when he does not even attempt to grapple with the undisputed facts
3 submitted with Defendants’ Motion: that it was *Plaintiff* who told the Times about
4 the complaint made against him in April 2022 (SUF 27) and that the Times obtained
5 the investigation after it served a formal PRA request on the County in November
6 2023. (Mot. at 9:8–12.) His argument that the “County” publicized these issues in
7 January 2024 is frivolous (Opp. at 9:12–13)—the article in question was written by
8 the Los Angeles Times. Plaintiff points to no facts showing that the County
9 controlled either the timing or the content of the article.

10 Taking another example, Plaintiff claims the Huntsman and Lim complaints
11 were not based on protected classes, such as race, gender or national origin. (Opp.
12 at 11:23–25.) Tellingly, he cites to no facts to support this argument. Nor can he—
13 the investigation forms list the Policy of Equality violations at issue, and the Intake
14 Assessments performed by the Department *while Plaintiff was Sheriff* discuss the
15 protected classes in extensive detail. (See COE Exs. 21, 34.)

16 Plaintiff complains that the interview of Coates was not recorded. (Opp. at
17 2:2-5.) He omits the fact that Coates has consistently stated that Plaintiff harassed
18 and discriminated against the Justice Deputies based on them being “all women”—
19 during her interview, at deposition, and in her declaration. (See COE 25 at 477
20 (COLA 2140); *id.* Ex. 13 at 52:8–10; Coates Decl. ¶ 10.)

21 At bottom, even if *all* of the above were true, these “facts” still do not help
22 Plaintiff establish his prima facie burden of “substantial” causation. All of it is a
23 distraction from the fact that after extensive discovery, Plaintiff has no proof of his
24 conspiracy theories about the Board and no evidence of retaliation.

25 Plaintiff’s FAC alleged that the Board orchestrated the “Do Not Rehire”
26 notation in retaliation for his protected speech. Plaintiff’s Opposition was his
27 opportunity to present facts to support this allegation. He did not, and cannot, do so.
28

1 **4. Plaintiff Does Not Address the Lack of “But-For” Causation**

2 Defendants’ Motion argued that, even assuming Plaintiff met his prima facie
3 burden, there was no genuine dispute of material fact as to the lack of “but-for”
4 causation. (Mot. at 17:12–2.) In other words, even if Plaintiff could point to facts
5 showing that the Board’s alleged retaliatory animus played some role in the
6 complaints against Plaintiff (he cannot), the outcome of those complaints would
7 have been the same. (*Id.*); *Boquist*, 32 F.4th at 778 (“If there is a finding that
8 retaliation was not the but-for cause of the [adverse action], the claim fails for lack
9 of causal connection between unconstitutional motive and resulting harm, despite
10 proof of some retaliatory animus in the official’s mind.” (alteration in original)).

11 Plaintiff’s Opposition does not address this argument; he has thus conceded it.
12 *Colonies Partners LP*, 2020 WL 5102160, at *29 n.42. Plaintiff presents no
13 genuine dispute of fact to show that the CEOP—an independent body not affiliated
14 with the Board—would have made a different recommendation. Quite the contrary,
15 the CEOP members unequivocally testified that Plaintiff’s misconduct was founded
16 and severe. (Mot. at 17:15–18:2; SUF 46, 48.) There is no “but-for” causation.

17 **5. This Court Should Not Second-Guess the CEOP**

18 Faced with no evidence of actual retaliation, Plaintiff mounts various
19 broadsides on the investigations into his misconduct or how the CEOP arrived at its
20 recommendations. (Opp. at 6:22–8:1.) Plaintiff effectively invites this Court to
21 independently review the investigations and come to a different result than the
22 CEOP. This is obviously improper.

23 *First*, it is not the role of a federal court to act as a surrogate decisionmaker
24 for the CEOP. *See, e.g., Ridge Top Ranch, LLC v. U.S. Fish & Wildlife Serv., No.*
25 *CIV. S-13-2462 LKK*, 2014 WL 841229, at *15 (E.D. Cal. Mar. 4, 2014) (“[A]
26 ‘court cannot lawfully second-guess the agency, unless . . . bad faith is so manifest
27 that the agency’s judgments can no longer be trusted.’” (citation omitted)). Plaintiff
28 has no evidence of any bad faith or animus on behalf of the CEOP—he merely

1 disagrees with its conclusions.

2 *Second*, if Plaintiff wanted judicial review of the CEOP’s recommendations,
3 the proper action would have been to file a writ in state court. Plaintiff did not do
4 so. The Court should decline Plaintiff’s request that it reevaluate a County-level
5 proceeding that Plaintiff never appealed or contested.

6 **B. Plaintiff Cannot Establish Liability Under Section 1983**

7 Defendants’ Motion also showed that Plaintiff could not establish a custom,
8 pattern, or practice necessary to bring a *Monell* claim against the County. (Mot. at
9 18:28–8.) Plaintiff disagrees and argues that he satisfies *Monell* because Chief
10 Laura Lecrivain, the Department representative who concurred with the CEOP’s
11 recommendations, is a final policymaker. (Opp. at 12:23–14:18.) But the
12 undisputed evidence shows that Chief Lecrivain was **not** a policymaker. (SUF 63.)

13 At the outset, Plaintiff’s Opposition cites to various purported statements by
14 Chief Lecrivain, none of which are part of the factual record, or in the deposition
15 excerpts Plaintiff submitted. (See Dkt. No. 105-5, Ex. 34.) Contrary to his
16 assertions, Plaintiff has not submitted any evidence regarding Chief Lecrivain’s
17 delegation or lack thereof (Opp. at 12:28), whether there was “protocol in place,”
18 (*id.* at 13:5) or any conversations between Chief Lecrivain and County Counsel (*id.*
19 at 13:10–19.) This is likely why the vast majority of Plaintiff’s arguments regarding
20 Chief Lecrivain lack any factual citation whatsoever. The Court cannot conclude
21 that Chief Lecrivain is a policymaker based on nonexistent record evidence. *E.g.*
22 [Fed. R. Civ. P. 56\(c\)\(1\)\(A\)](#) (noting a party must point to “particular parts of
23 materials **in the record**” (emphasis added)); [Roberts v. Broski](#), 979 F. Supp. 746,
24 [753 \(N.D. Ill. 1997\)](#), *aff’d*, 186 F.3d 990 (7th Cir. 1999) (noting “It doesn’t appear
25 that such evidence exists within the trial record. Accordingly, the court ignores it.”).

26 Despite this lack of submitted evidence, Plaintiff appears to hang his hat on
27 the fact that Chief Lecrivain was the “decision maker” for whether to concur in the
28 CEOP’s recommendations. (*E.g.*, Opp. at 12:23–13:1.) Simply because she made a

1 decision in the course of her job does not mean she is a policymaker for the
2 Department. Millions of government employees make decisions in the course of
3 their jobs on a daily basis—that does not render all of them final policymakers for
4 *Monell* purposes.

5 Plaintiff provides no case citations to explain *how* Chief Lecrivain is a
6 policymaker—that is because there are none. And his arguments regarding her
7 authority are inherently self-contradictory. On the one hand, Plaintiff claims that
8 Chief Lecrivain was a policymaker for the Department who was capable of
9 rendering a final decision on Plaintiff. But on the other hand, he acknowledges
10 (again, without supporting record evidence) that Chief Lecrivain sought advice from
11 County Counsel regarding what the scope of her role actually was. (*See Opp.* at
12 13:10–19.)

13 Plaintiff’s argument suffers from another flaw. Even assuming *arguendo* that
14 Chief Lecrivain was a “policymaker,” Plaintiff still does not identify what “policy”
15 wronged him. Under the single policymaker exception, Plaintiff is required to
16 identify the final impermissible policy at issue. *See, e.g., Segal v. Los Angeles*
17 *County*, 852 F.2d 1290, 1988 WL 79481, at *3 (9th Cir. 1988) (unpublished)
18 (plaintiff “must produce some evidence of a county policy”). Allegations of isolated
19 decisions by County employees do not support a *Monell* claim. *Id.*

20 But that is all Plaintiff points to here—a one-off decision from Chief
21 Lecrivain to concur in a CEOP recommendation. This is not a “policy”; and
22 Plaintiff does not provide any facts about what “policy” Chief Lecrivain created by
23 her concurrence, nor can he. No such policy exists.³

24
25 ³ If the Court decides that Chief Lecrivain was a “policymaker,” that would dictate
26 that summary judgment be granted to the County, Board, CEOP, and Office of
27 Inspector General. That is because Chief Lecrivain works for the Department and
28 cannot be deemed a “policymaker” for any of these other County subdivisions. It
would also dictate that Chief Lecrivain be dismissed as an individual defendant,

1 **C. Plaintiff Lacks Standing**

2 Defendants presented undisputed evidence that (1) a “Do Not Rehire”
3 notation is not a bar to employment; and (2) despite knowing this fact, Plaintiff has
4 not reapplied for County employment at any point during this case. (*See* Mot. at
5 20:3–12.) Predictably, Plaintiff’s Opposition responded that reapplying would be
6 “futile.” (Opp. at 10:12–15.) He cites to no facts to support this statement.

7 Although such a bald assertion may have been enough to survive a motion to
8 dismiss, summary judgment requires more. Plaintiff’s claim is founded entirely
9 upon the exact type of speculation and hypothetical injury that summary judgment is
10 designed to curtail. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 436 (2021) (a
11 hypothetical injury that may or could occur does not suffice, because the “mere risk
12 of future harm” is not a concrete harm); *Williams v. Seniff*, 342 F.3d 774, 785 (7th
13 Cir. 2003) (conclusory statements and “unsupported conjecture [are] not competent
14 evidence” (citation omitted)). Plaintiff has not met his burden to establish standing.

15 Nor does Plaintiff grapple with the fact that his application was considered
16 and he was interviewed for the position of Chief of Police with LA Metro. (*See*
17 Mot. at 20:13-16.) This undisputed evidence shows the file notation given to
18 Plaintiff by the County does **not** prevent him from pursuing his law enforcement
19 career or any other employment opportunities.

20 Plaintiff’s reliance on *Pickern v. Holliday Quality Foods*, 293 F.3d 1133,
21 1137-39 (9th Cir. 2002), for his futility argument is also misplaced. (Opp. at 10:11-
22 15.) *Pickern* was **not** a First Amendment retaliation case. 293 F.3d at 1135-36.
23 The plaintiff there sued for injunctive relief for an alleged violation of Title III of
24 the Americans with Disabilities Act (“ADA”). *Id.* The Ninth Circuit held the
25 plaintiff had standing because he was deterred from visiting the business because of
26 its undisputed ADA violations. *Id.* at 1138-39. *Pickern* has no application here.

27 _____
28 since she would be acting in her official capacity. Plaintiff cannot have it both ways.

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D. The County Is The Only Proper Defendant

Plaintiff did not oppose the County’s argument that summary judgment is proper for the individual defendants and has thus conceded the argument. *Colonies Partners LP*, 2020 WL 5102160, at *29 n.42. The individuals should be dismissed.

As to the redundant County subdivision defendants, Plaintiff cites only a single case from the Eastern District of California where the court refused to dismiss a county sheriff’s department, even though the county was also a named defendant. (Opp. at 14:24–27 (citing *Est. of Osuna v. County of Stanislaus*, 392 F. Supp. 3d 1162 (E.D. Cal. 2019).) Plaintiff did not contest any of the cases cited by Defendants from the Central District that held to the contrary. (See Mot. at 21:4–9.)

In any event, *Osuna* is not like the facts here. That case turned on whether a sheriff’s department is considered a “person” for the purposes of Section 1983. See *Osuna*, 392 F. Supp. 3d at 1170–71. That is not the question here. Defendants’ point, which Plaintiff failed to meaningfully address, is that there is no need for redundant government subdivisions in this case where the County is a defendant. If this case proceeds to trial, the County is the only proper defendant.

III. CONCLUSION

For the reasons stated above and in Defendants’ Motion, this Court should grant summary judgment on Plaintiff’s First Amendment claim.

DATED: May 5, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief contains 4,627 words, which:

☒ complies with the word limit of L.R. 11-6.1.

☐ complies with the word limit set by court order dated _____.

DATED: May 5, 2025

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